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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,650	10/18/2004	Jakob Bjerkemo	1321-8 (21061 US JLN MBN)	2292
7590	06/13/2006		EXAMINER HOLZEN, STEPHEN A	
David M Carter Carter DeLuca Farrell & Schmidt 445 Boadhollow Road Suite 225 Melville, NY 11747			ART UNIT 3644	PAPER NUMBER

DATE MAILED: 06/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/511,650	Applicant(s) BJERKEMO, JAKOB	
	Examiner Stephen A. Holzen	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 10-17 is/are pending in the application.
- 4a) Of the above claim(s) 6, 10 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7 and 11-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments and amendments with respect to the rejection(s) of claim(s) 1 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of MiG 1.44

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5, 7, 11-16 are rejected under 35 U.S.C. 102(b) as being anticipated by "The Mikoyan Project 1.44/1.42".

The Mikoyan Project 1.44/1.42 is a Russian Air Force prototype fifth-generation air-superiority fighter aircraft. Apart from a number of names along the lines of "Object/Project 1.44/1.42", the aircraft is also known as the MiG-MFI.

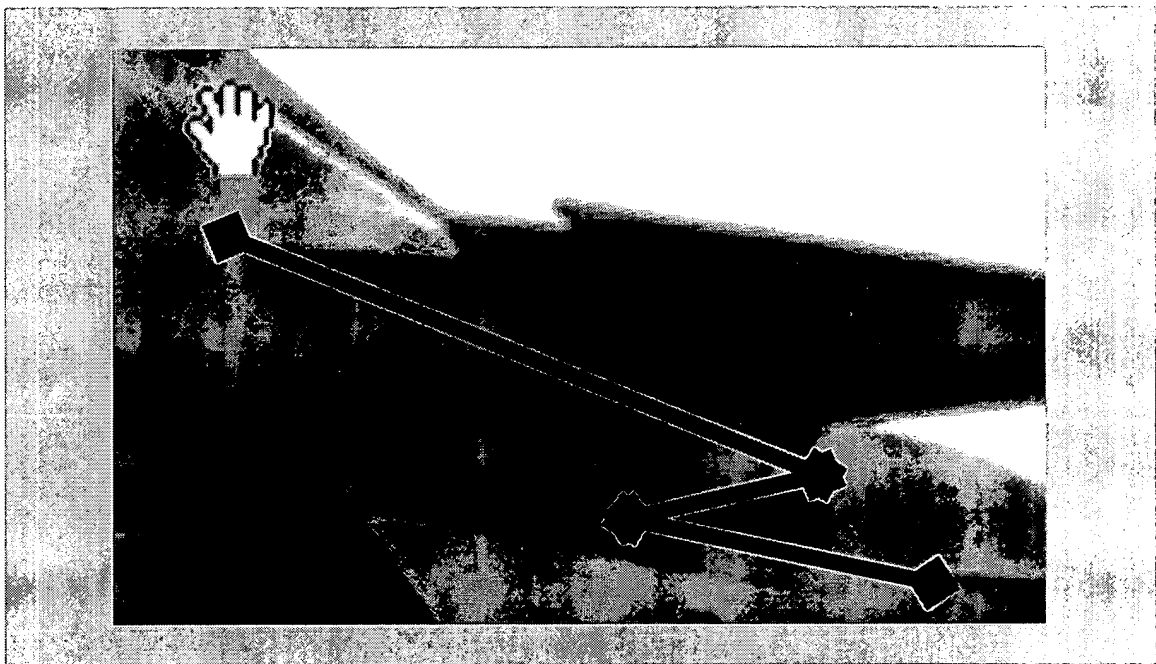
The Russian government cancelled the MFI program in 1997 due to the unacceptably high per-unit cost of the aircraft. The 1.44 is a delta-winged, twin-

tailed single seat air superiority/strike fighter with an all-moving forward canard plane. Its physical appearance and design characteristics most resemble the EFA-2000 Eurofighter (both of which provided much inspiration in the design of the People's Republic of China Chengdu J-10). It is powered by two Lyulka AL-41F afterburning, thrust vectored turbofan jet engines, each generating 175 kN (39,340 lbf) of thrust (these engines are still in development). Both engines are fed by a single air intake placed under the fuselage. The 35-ton aircraft has a theoretical at-altitude maximum speed of Mach 2.6, and is capable of long-term supersonic flight. The 1.44 has a tricycle landing gear system, with a single, dual-wheel landing gear in the front, and two in the rear. Avionics on the 1.44 are considered cutting-edge by Western standards: the glass-cockpit-enabled fighter features a pulse Doppler radar with a phased aerial array antenna. The radar system is linked to a fire control system that allows the fighter to engage up to twenty separate targets at the same time. It is claimed that the radar system also enables the 1.44 to compete with the likes of the F-22 at beyond visual range (BVR) aerial combat. This claim is somewhat debatable because it is unlikely that it can compete with American made AESA radars. The handling and maneuverability characteristics of the 1.44 are estimated to be on par with that of the F-22, since the MiG features thrust vectoring, digital fly-by-wire flight control,

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and two powerful engines. Its internal bay is large enough to carry 8 R-77 missiles. It is believed that Project 1.44 is test-bed for Russian plasma stealth technology granting stealth capabilities without compromising airframe design.¹

The examiner has printed images of the MiG-35 (MiG-1.44) from various on-line sources to illustrate the aircraft.



¹ "Mikoyan Project 1.44." Wikipedia, The Free Encyclopedia. 7 May 2006, 19:33 UTC. 18 May 2006, 20:36 <http://en.wikipedia.org/w/index.php?title=Mikoyan_Project_1.44&oldid=52022651>.

It can be seen from the photograph above that the MiG-35 (MiG 1.44) has a canard and a wing on different planes, there is a fold on the exterior of the craft that runs between the canard and the wing. It should be appreciated that the photo above (and those attached) teaches every limitation of applicant's claims. The examiner does not believe it is necessary to outline the rejection of these claims because the photograph above provides the best explanation of how the prior art reads on the claims. Additionally the examiner asserts that the photograph above and those attached are substantially similar to applicant's own drawings (see Figure 2 of the presently filed application).

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen A. Holzen whose telephone number is 571-272-6903. The examiner can normally be reached on M-F 8:30-5:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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